



1 Mark D. Estle (CA Bar No. 135004)
2 THE ESTLE LAW FIRM
3 12520 High Bluff Drive, Suite 265
4 San Diego, California 92130
5 Telephone (858)720-0890
6 Facsimile (858)720-0092

7 Attorney for Movant THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW
8 YORK, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**
12 **SACRAMENTO DIVISION**

13 In re:

14 MARIA ELENA FLORES,

15 Debtor (s).

Case No. 11-44149-C-13C
Chapter 13
DC No.: MDE-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY

Date: December 20, 2011
Time: 1:30 p.m.
Judge: KLEIN
Dept: C
Floor: 6th
Crtm: 33
Place: 501 I STREET
SACRAMENTO, CA

16
17
18
19
20 TO THE DEBTOR MARIA ELENA FLORES, THE CHAPTER 13 TRUSTEE AND ALL
21 OTHER INTERESTED PARTIES:

22 THE BANK OF NEW YORK MELLON FORMERLY KNOWN AS THE BANK OF
23 NEW YORK AS SUCCESSOR TRUSTEE ("Movant") moves this Court for an Order granting
24 Movant relief from the automatic stay in order to exercise its remedies under California law,
25 including but not limited to, recovery of possession of the Property located at 3633 French
26 Avenue, Sacramento, CA 95821 (the "Property").

27 This Court has jurisdiction over this matter pursuant to 11 U.S.C. §361 and §362 and
28 Federal Rules of Bankruptcy Procedure 4001, 9013 and 9014, and Local Bankruptcy Rules for

1 the Eastern District, Rule 4001-1. This is a core proceeding under 28 U.S.C. 157 (b) (2).

2 This motion is based upon all of the documents, records and evidence on file in the
3 instant case together with the Notice of Motion, this Motion, and the Declaration of Deborah M.
4 Bass filed and served concurrently herewith, and such additional documents, records, evidence
5 and argument of counsel as may be presented.

6 Movant is the owner of the Property, having obtained title to the Property through a
7 lawful foreclosure proceeding under California Civil Code §2924. A Trustee's Deed Upon Sale
8 conveying title to the Property to Movant was executed and delivered to Movant on June 1,
9 2011.

10 Movant served Debtor with a Notice to vacate the Property on June 14, 2011. Movant
11 then filed an unlawful detainer complaint on July 11, 2011.

12 A Judgment for unlawful detainer was entered against Debtor on September 15, 2011. A
13 writ of possession was then issued on September 20, 2011.

14 Debtor filed this Chapter 13 bankruptcy on October 7, 2011.

15 One copy of the Relief from Stay Summary Sheet is filed herewith as a separate
16 document in accordance with Local Rule 4001-1(c).

17 Movant alleges that cause exists based on the foregoing, there is no equity in the
18 Property, and the Property is not necessary for an effective reorganization.

19 WHEREFORE, Movant prays this Court issue an Order:

20 A. Terminating the automatic stay to permit Movant, its successors and/or assigns, to
21 exercise its lawful remedies under applicable non-bankruptcy law, including but not limited to
22 the right to obtain possession of the Property; and

23 B. In the event this Chapter 13 proceeding is converted to another Chapter, the order
24 be deemed binding and of full force and effect in any such converted proceeding as to the parties
25 herein; and

26 C. That the 14-day waiting period prescribed by Federal Rules of Bankruptcy
27 Procedure, Rule 4001 (a)(3) be waived.

28 ////

1 ////

2 D. Movant shall be granted such other and further relief as this Court deems just and
3 proper.

4
5 THE ESTLE LAW FIRM

6 DATED: November 18, 2011

7 By: /s/ Mark D. Estle
8 MARK D. ESTLE,
9 Attorney for Movant
10 THE BANK OF NEW YORK MELLON
11 FKA THE BANK OF NEW YORK, NOT
12 IN ITS INDIVIDUAL CAPACITY BUT
13 SOLELY AS TRUSTEE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28